

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY

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Docket No. 14-0316

Petition to Make Housekeeping Revisions

)

And a Compliance Change to filed Rate Formula

)

**REPLY BRIEF ON EXCEPTIONS OF
THE PEOPLE OF THE STATE OF ILLINOIS**

The People of the State of Illinois

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November 3, 2014

Table of Contents

I.	INTRODUCTION.....	2
II.	ARGUMENT.....	3
	A. The Commission Should Reject ComEd’s Proposed Definition Of Its Formula Rate Structure, Which Would Limit Parties’ Ability To Challenge ComEd’s Rate Proposals And Create An Inefficient Regulatory Process.....	3
	B. The Proposed Order’s Identification of Schedules FR A-1 And FR A-1 REC As The Formula Rate Structure Does Not Make ComEd’s Formula Rate Tariff Less Standardized And Less Transparent.....	6
	C. The Proposed Order’s Conclusion Is Consistent With EIMA.....	9
III.	CONCLUSION	11

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The People of the State of Illinois, by and through Attorney General Lisa Madigan (“AG” or “the People”) submit the following Reply Brief on Exceptions in response to the Brief on Exceptions filed by Commonwealth Edison Company (“ComEd” or the “Company”) on the issues of how to define ComEd’s Formula Rate structure, and whether a separate Section 9-201 of the Public Utilities Act (“the Act”) proceeding must be filed when parties seek to propose changes to the Company’s annual formula rate tariff filing.

I. INTRODUCTION

ComEd’s position on the issue of how to define the Company’s formula rate tariff, articulated in its Brief on Exceptions (“BOE”), is for the Commission to (1) ignore its prior orders, including its recent order in ICC Docket No. 13-0501/0517 (cons.), *Ameren Illinois Company* (“*Ameren Order*”), which rejected that utility’s argument to define the tariff as every schedule and workpaper filed in annual formula rate update cases¹; and (2) require Staff and Intervenors to jump through the hoop of initiating a Section 9-201 of the Act proceeding each time a ratemaking adjustment is proposed in those annual dockets.

¹ Order of August 19, 2014 at 19.

As discussed below, ComEd's position both ignores recent Commission orders on this very issue, including the First Interim Order adopted in this docket, and, if adopted, would likely trigger annual Section 9-201 proceedings if Staff- and Intervenor-proposed adjustments to the Company's annual revenue requirements could not be specifically identified as a line item in Schedules FR A-1 and FR A-1 REC. The People submit that such a scenario is contrary to the intent of the General Assembly when it approved the Energy Infrastructure and Modernization Act ("EIMA") provisions. ComEd's arguments should be rejected in the Commission's final order in this proceeding.

II. ARGUMENT

B. The Commission Should Reject ComEd's Proposed Definition Of Its Formula Rate Structure, Which Would Limit Parties' Ability To Challenge ComEd's Rate Proposals And Create An Inefficient Regulatory Process.

ComEd first notes in the Introduction of its Brief that the Proposed Order's definition of the formula rate tariff "does not make sense under EIMA" because EIMA is "intended to provide greater certainty for utilities committing to make substantial added investments." ComEd BOE at 1-2. The Company further complains that "[r]econsideration of the structure and protocols of the formula rate is prohibited in FRU proceedings." *Id.* at 2. In doing so, ComEd misinterprets exactly what EIMA provides utilities and intervening parties in the regulatory process.

First, no matter how the formula rate tariff is defined in this proceeding, it is undeniable that EIMA in and of itself "provides greater certainty for utilities committing to make substantial added investments." EIMA ensures that utilities regulated under formula rates will receive no less than annual rate adjustments based on (1) the utility's most recently filed Federal Energy Regulatory Commission ("FERC") Form 1 report detailing expenses and revenues; (2) forecasted plant investment data for the current and coming year; and (3) a reconciliation based

on actual revenues received of the prior year's formula rate filing, ICC-set revenue requirement. 220 ILCS 16-108.5(c), (d). These very valuable utility and shareholder guarantees define and, indeed, exude financial certainty. Thus, the notion that the Commission's definition of the formula rate tariff in this docket will in any way impede the certainty guaranteed under EIMA is not a credible argument.

Second, as noted in the People's Initial Brief, adoption of ComEd's definition of the formula rate tariff would inhibit parties' ability to challenge ComEd's rate base and expense line items each year because virtually any proposed adjustment would require the initiation of a Section 9-201 of the Act filing. And, as has been made clear in this docket and in ICC Docket No. 13-0553 (the Commission's investigation of ComEd's formula rate tariff wherein certain AG-proposed adjustments were considered), accepting ComEd's formula rate tariff definition will ensure that this two-prong, procedurally exhausting Section 16-018.5(c)/9-201 framework will continue unabated each and every year. Nothing about that scenario makes sense under EIMA.

Challenging the Proposed Order's correct conclusion that "[t]he Commission cannot declare the supporting schedules, etc. to be part of the formula rate structure without having specifically approved them" (PO at 17), Com Ed further argues that the formula rate structure and protocols should be defined to include, in addition to Schedules FR A-1 and FR A-1 REC, all schedules and appendices referenced in the formula rate tariff (i.e., Schedule FR A-3 through Schedule FR D-2, the appendices, App 1 through App 11.). ComEd BOE at 4. *Id.* ComEd justifies its position on the definition of the formula rate tariff by arguing that the supporting schedules and appendices that develop the data summarized in Schedules FR A-1 and FR A-1REC, FR A-1 and FR A-1REC 53, were "submitted for approval (along with workpapers), were

explained in detail, were reviewed by the Commission, and ultimately were revised by the Commission's Order in resolving contested issues – all in ICC Docket No. 11-0721.” *Id.* The Company then goes on to point out a series of ratemaking adjustments adopted by the Commission that involved supporting schedules and tariff appendices. *Id.* at 4-6. This argument, too, is defective.

First, simply because the Commission made conclusions on proposed adjustments, contested or otherwise, that implicate various formula rate schedules and appendices does not mean that resolution of the issues amounted to a declaration or definition of the tariff *structure*. These conclusions constituted ratemaking adjustments under Article IX and Section 16-108.5(c), as the statute specifically allows. (“Such review shall be based on the same evidentiary standards, including, but not limited to, those concerning the prudence and reasonableness of the costs incurred by the utility, the Commission applies in a hearing to review a filing for a general increase in rates under Article IX of this Act.”) 220 ILCS 5/16-108.5(c). The fact that they individual ratemaking conclusions constituted “findings of fact” and “conclusions of law”, too, did not thereby impact or define the formula rate tariff itself, as ComEd suggests. ComEd BOE at 6. Certainly, every Commission finding on a proposed adjustment in any case is considered a “finding” and, at times, “conclusion of law.” (Indeed, to the extent that all findings of fact are deemed to be consistent with the Public Utilities Act, they are arguably conclusions of law.)

ComEd also references the statement in the Commission's 11-0721 Order -- “IT IS FURTHER ORDERED that Commonwealth Edison Company shall change the formula template in accordance with this Order” -- as additional evidence that the tariff was defined as more than just the summary schedules. ComEd BOE at 6. But that sentence, referencing the “formula rate template,” does not specifically reference “the performance-based formula rate structure or

protocols” referenced in 16-108.5(c) that can be changed only through a Section 9-201 proceeding. 220 ILCS 5/16-108.5(c). Accordingly, there is nothing inconsistent in the Proposed Order’s findings and the Commission’s findings in Docket No. 11-0721, as ComEd asserts.

B. The Proposed Order’s Identification of Schedules FR A-1 And FR A-1 REC As The Formula Rate Structure Does Not Make ComEd’s Formula Rate Tariff Less Standardized And Less Transparent.

ComEd’s second argument against the Proposed Order’s adoption of Schedules FR A-1 and FR A-1 REC as the actual tariff “structure” is a hollow hyperbole. The Company asserts that, if the supporting schedules and workpapers are excluded from the definition of the formula rate “structure”, then the EIMA requirement that the formula rate approved by the Commission shall “*specify the cost components* that form the basis of the rate charged to customers with *sufficient specificity* to operate in a *standardized manner* and be updated annually with *transparent information*” will be unlawfully compromised. Com Ed BOE at 8 (emphasis supplied by ComEd), citing Section 16-108.5(c).

This creative, but ultimately defective argument, was correctly rejected in the Proposed Order and should be affirmed by the Commission in its final order. The requirement in EIMA that references specificity, transparency and standardization refers to the formula rate itself, not the tariff protocols. As Ms. Ebrey pointed out in testimony, there is nothing transparent or standardized about *any* of these documents. She correctly notes that it is readily apparent from a review of the Rate DSPP tariff that only the *title* of each supporting schedule, appendix and workpaper is included in the tariff, and that there is no detail of the information that is to be included on the schedules, appendices, or workpapers that support Schedules FR A-1 and FR A-1REC. Staff Ex. 2.0 at 3. Furthermore, as noted by Staff witness Ebrey, the Commission has

not specified how information should appear on the supporting schedules, appendices, and workpapers that are merely listed in ComEd's Commission-approved tariff. In contrast, the Commission has approved the information and formatting that is to appear on Schedules FR A-1 and FR A-1REC, ComEd Ex. 1.01. *Id.*

As noted in the People's Initial Brief, Ms. Ebrey also took issue with ComEd witness Brinkman's claim that "the certainty, specificity and transparency established by defining ComEd's rate formula as the full set of Schedules and Appendices set forth and listed in Rate DSPP (do not) *impair* the Commission's ability to review ComEd's costs." Staff Ex. 2.0 at 5, citing ComEd Ex. 1.0 at 9. She correctly noted that at issue is the Commission's ability to approve just and reasonable rates within a formula rate proceeding -- not "the Commission's ability to review ComEd's costs" in a designated tariff. *Id.* The People agree that ComEd's definition of the formula rate tariff would result in the untenable position that any change to any spreadsheet included in "the full set of Schedules and Appendices set forth and listed in Rate DSPP" must be approved in a separate Section 9-201 proceeding, thereby impairing the Commission's ability to set just and reasonable rates in each formula rate update proceeding. *Id.*

Importantly, as the People noted in their Initial Brief in this docket, Ms. Ebrey testified that "(i)ssues should be considered for ratemaking purposes based upon their *merits*, such as whether or not a cost is just or reasonable, and not on the physical layout or *format* of a supporting schedule that has not been explicitly approved as part of the formula rate tariff." AG Initial Brief at 13-14, citing Staff Ex. 2.0 at 5. The Proposed Order correctly agreed with Staff, CUB and the People that if adopted, ComEd's definition would preclude Staff and Intervenors from proposing adjustments to operating expenses and rate base that are not currently included in the Company's definition of "formula rate structure," thereby limiting the Commission's

statutory authority to ensure in the annual formula rate proceeding that the rates established under Section 16-108.5 are, indeed, just and reasonable. Under such a scenario, neither Staff nor intervening parties could propose simple prudence-based adjustments to operating expense or rate base values unless they filed a Section 9-201 proceeding, to be completed in an expedited fashion by November 30th each year. Proposed Order at 17. That result is inconsistent with the EIMA provisions that specifically authorize the Commission to analyze the proposed rates under Section 16-108.5(c)(6) and 16-108.5(d)(3) by incorporating the Article IX ratemaking standards of justness, reasonableness and prudence in the annual rate analysis.

ComEd is, not surprisingly, amenable to proceeding under such a resource-straining, inefficient procedural two-docket track. ComEd BOE at 8. But ComEd's plan would thwart principles of judicial economy and ignore the financial limitations imposed upon consumer intervenors and indeed the Commission Staff, whose financial resources are provided by the taxpayers of Illinois. The Commission should reject ComEd's arguments in that regard.

The Company further argues that "EIMA does not state that summary schedules, like ComEd's Sch FR A-1 and Sch FR A-1 REC, are an acceptable proxy for a utility's complete formula that could be used to establish its rates." *Id.* But neither does EIMA state that the formula rate structure or tariff is every accompanying schedule and workpaper, as ComEd proposes. In fact, what is clear is that the General Assembly left it up to the Commission to determine exactly what constituted the formula rate tariff "structure and protocols" for purposes of determining when a Section 9-201 proceeding is necessary. Section 16-108.5(c) states:

After the utility files its proposed performance-based formula rate structure and protocols and initial rates, the Commission shall initiate a docket to review the filing. *The Commission shall enter an order approving, or approving as modified, the performance-based formula rate, including the initial rates, as just and reasonable within 270 days after the date on which the tariff was*

filed, or, if the tariff is filed within 14 days after the effective date of this amendatory Act of the 97th General Assembly, then by May 31, 2012.

220 ILCS 5/16-108.5(c) (emphasis added). This proceeding is the Commission's opportunity to clarify the definition of formula rate structure and protocols for ComEd.

The Commission recently set out to provide a specific definition, to be applied in each annual formula rate proceeding, in its August 19, 2014 Order in Ameren Illinois Company ("Ameren") Docket No. 13-0501/0517 (Cons.). ICC Docket No. 13-0501/0517 (cons.), Order of August 19, 2014 at 19 ("Ameren Order"). In that order, the Commission concurred with Staff witness Ebrey's definition, offered again for ComEd in this docket. ComEd has failed to identify a single reason why that conclusion should not hold here.

In addition, ComEd's definition of the formula rate tariff is inconsistent with other prior, recent Commission orders addressing the topic, as discussed at pages 10-12 of the People's Initial Brief. *See* AG Initial Brief at 10-12. For these reasons, too, the Commission reject ComEd's arguments.

C. The Proposed Order's Conclusion Is Consistent With EIMA.

Finally, ComEd argues, without citing to any specific statutory provision, that the Proposed Order's adoption of Staff witness Ebrey's recommendation to define the "formula rate structure" to mean Schedules FR A-1 and FR A-1 REC is inconsistent with EIMA provisions. It opines that defining the tariff as just those schedules "contain no reference to the FERC Form 1 costs that are statutorily required to 'populate the performance-based formula rate and set the initial [and subsequent] delivery services rates under the formula.'" ComEd BOE at 10.

That argument is not persuasive. No EIMA provision requires that the formula rate tariff and protocols be defined to specifically reference the FERC Form 1 *costs* per se. They are merely to “populate” the tariff. That suggests that they are inputs, not the template itself.

The Company also reverts to the analogy that adopting that position “is akin to asserting that blue prints for a house are limited to the cover page elevation drawing.” ComEd BOE at 10. This analogy is neither informative (unless the Commission is staffed with architects, which it is not) nor clear. Staff, however, was correct to point out in its Reply Brief in response to that argument that:

...the many minor changes in a blueprint that occur throughout the construction of a home are evaluated and approved as the home is being constructed. This is consistent with Staff’s position in this case. Under Staff’s proposal, each change to the schedules supporting Schedules FR A-1 and FR A-1 REC, appendices, and workpapers would be analyzed and considered in the conduct of each annual formula rate proceeding and any changes that were unacceptable to Staff or any party would be litigated in that proceeding.

Staff RB at 4-5. The blueprint analogy is simply inapt. The Company’s entreaties for the Commission to question the lawfulness of the Proposed Order’s conclusions should be rejected.

Finally, the Company suggests that the Commission, as an alternative, postpone any decision in this proceeding on defining a formula rate tariff for ComEd. ComEd BOE at 11-12. The Company suggests that the Commission wait until “there is an actual controversy that provides the proper forum for analyzing the underlying formula rate structure issue for ComEd.” *Id.* at 11. The fact that the parties are debating the definition in the instant proceeding is evidence that there is “an actual controversy.” Moreover, postponing a decision puts parties and Staff in the position of having to file a protective petition to initiate a Section 9-201 proceeding each year, as the People had to do in Docket 13-0318 and 13-0553, in order to ensure a ruling by

the Commission on a particular accounting adjustment that the utility claims would impact the formula rate tariff. This docket is the right vehicle to settle the question once and for all.

Finally, ComEd's proposal for the Commission to initiate a rulemaking proceeding for purposes of settling the formula rate tariff definition is equally flawed. For one, the issue is being litigated in this docket, as noted above. Second, the Commission has already entered an order defining Ameren's formula rate tariff. Thus, ComEd would be the only utility in the rulemaking. Finally, the proposal ignores the time involved in obtaining a final rule through the Joint Committee on Administrative Rules process. Multiple year proceedings are the norm. That fact is reason enough to reject that proposal, in light of the annual nature of formula rate update proceedings. ComEd's position would simply delay that decision and, again, require parties to file protective Section 9-201 proceedings when the possibility exists that the Company would challenge the adjustment as a change to the formula rate tariff.

For all of the reasons, discussed above, ComEd's arguments included in its BOE should be rejected in the Commission's final order in this proceeding.

III. CONCLUSION

For the foregoing reasons, the People request that the Commission enter an order consistent with the recommendations in this Reply Brief on Exceptions and in the Proposed Order.

Respectfully submitted,

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